

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

**QUARTERDECK CONDOMINIUM
ASSOCIATION OF APARTMENT OWNERS, a
Washington nonprofit corporation,**

Plaintiff,
v.

NATIONAL SURETY CORPORATION, an Illinois Company; and DOE INSURANCE COMPANIES 1-10,

Defendants.

NO.

COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES

JURY DEMAND

Plaintiff Quarterdeck Condominium Association of Apartment Owners (the “Association”) alleges as follows:

I. INTRODUCTION

1.1 This is an action for declaratory judgment and money damages, seeking:

- (A) A declaration of the rights, duties and liabilities of the parties with respect to certain controverted issues under an insurance policy issued to the Association.
- (B) Monetary damages
- (C) Attorneys' fees (including expert witness fees) and costs.
- (D) Any other relief the Court deems just and equitable.

**COMPLAINT FOR DECLARATORY RELIEF
AND DAMAGES- 1**

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1 **II. PARTIES AND INSURANCE CONTRACTS**

2 2.1 The Association. The Association is a nonprofit corporation organized under the laws of the state
3 of Washington with its principal place of business located in Seattle, Washington. The Association has the
4 duty to maintain the common elements and any limited common elements of the Quarterdeck
5 Condominium complex which consists of six building with seventy-two (72) residential units located at
6 3700 26th Place West, Seattle, Washington 98199.

7 2.2 National Surety. National Surety Corporation (“National Surety”) is domiciled in Chicago,
8 Illinois with its principal place of business in Chicago Illinois. National Surety sold property
9 insurance policies to the Association including Policy No. MZX 80739539 (effective at least
10 7/20/99 to 7/20/00)

11 2.3 Doe Insurance Companies 1-10. Doe Insurance Companies 1-10 are currently unidentified
12 entities who, on information and belief, sold insurance policies to the Association that identify the
13 Quarterdeck Condominium as covered property.

14 2.4 Quarterdeck Insurers. National Surety, and Doe Insurance Companies 1-10 shall be
15 collectively referred to as the “Quarterdeck Insurers.”

16 2.5 Quarterdeck Policies. The policies issued to the Association by the Quarterdeck Insurers
17 shall be collectively referred to as the “Quarterdeck Policies.”

18 **III. JURISDICTION AND VENUE**

19 3.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332
20 (diversity jurisdiction) as the parties are completely diverse in citizenship and the amount in
21 controversy exceeds \$75,000.

22 3.2 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) as the Quarterdeck
23 Insurers marketed and sold insurance to the Association in King County; a substantial part of the
24 events giving rise to the claim, including the breach of contract, occurred in King County; and the
25 insured condominium building is located in King County.

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1 **IV. FACTS**

2 4.1 Incorporation by Reference. The Association re-alleges the allegations of paragraphs 1.1
3 through 3.2, above, as if fully set forth herein.

4 4.2 Tender to Quarterdeck Insurers. On February 22, 2017, Pacific Engineering Technologies
5 ("PET") conducted a limited inspection to determine the cause of glazing in the windows and
6 cracking in the exterior wall at unit 213. As part of the investigation PET discovered limited hidden
7 damage to exterior wall gypsum sheathing board near unit 213. The Association submitted a claim
8 for this damage to National Surety in June, 2017. The Association did not know if there was
9 damage in any other area of the Quarterdeck complex so asked National Surety and other insurers
10 to investigate in unrelated building components for hidden damage.

11 4.3 In December, 2017, the Association and its historical insurance companies including National
12 Surety conducted a joint intrusive investigation which involved making 17 plus intrusive openings
13 at Quarterdeck. As a result of this investigation, the Association's expert Soltner Group Architects
14 determined that there was widespread hidden damage to sheathing, framing, and weather resistive
15 barrier. Soltner Group determined that "Quarterdeck Condominium suffers from water entry caused
16 by wind driven rain. Damage occurred incrementally and progressively since shortly after initial
17 construction." The Association informed National Surety that it was seeking coverage for the
18 extensive hidden damage discovered during the December, 2017 intrusive investigation.

19 4.4 Soltner Group developed a scope to repair the hidden damage at Quarterdeck. McBride
20 Construction priced the scope of repair. According to McBride the cost to repair the hidden damage
21 at Quarterdeck is well over the \$75,000 jurisdictional limit. On May 15, 2018, National Surety
22 denied the Association's claim.

23 **V. FIRST CLAIM AGAINST QUARTERDECK INSURERS:**
24 **DECLARATORY RELIEF THAT THE QUARTERDECK POLICIES PROVIDE**
25 **COVERAGE**

26 5.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
27 allegations of paragraphs 1.1 through 4.4, above, as if fully set forth herein.

1 5.2 Declaratory Relief. The Association seeks declaratory relief from the Court in the form of
2 determinations regarding the following disputed issues:

3 (A) The Quarterdeck Policies cover the hidden damage to building paper, exterior
4 sheathing, and framing at the Quarterdeck Condominium Complex.

5 (B) No exclusions, conditions, or limitations bar coverage under the Quarterdeck
6 Policies.

7 (C) As a result, the Quarterdeck Policies cover the cost of repairing the building paper,
8 exterior sheathing, and framing at the Quarterdeck Condominium buildings.

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10 **VI. SECOND CLAIM AGAINST NATIONAL SURETY FOR BREACH OF**
CONTRACT

11 6.1 Incorporation by Reference. The Association re-alleges and incorporates by reference the
12 allegations of paragraphs 1.1 through 5.2, above, as if fully set forth herein.

13 6.2 Contractual Duties. National Surety has contractual duties under the terms of its respective
14 policies to pay the cost of repairing the covered damage to the Quarterdeck Condominium complex.

15 6.3 Breach of Contract. National Surety has failed to fulfill its contractual obligations to the
16 Association.

17 6.4 Damages. As a direct and proximate result of National Surety's breach of its insurance
18 contracts, the Association has been deprived of the benefits of its insurance coverage in an amount
19 to be proven at trial.

20 6.5 Additional Damages. As a direct and proximate result of National Surety's breach of its
21 insurance contracts, the Association has been forced to incur attorneys' fees, expert costs,
22 investigation costs, and other expenses in order to prosecute this action, the sole purpose of which is
23 to obtain the benefits of the Association's insurance contracts.

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VII. PRAYER FOR RELIEF

WHEREFORE, the Association prays for judgment as follows:

7.1 Declaratory Judgment Regarding Coverage. A declaratory judgment that the Quarterdeck Insurers' policy provides coverage as described herein and for money damages to be proven at trial.

7.2 Money Damages. For money damages in an amount to be proven at trial.

7.3 Attorneys' Fees and Costs of Suit. For reasonable attorneys' fees (including expert fees).

See Olympic Steamship Co. v. Centennial Ins. Co., 117 Wn.2d 37, 811 P.2d 673 (1991), and RCW 48.30.015.

7.4 Other Relief. For such other and further relief as the Court deems just and equitable.

VIII. DEMAND FOR JURY TRIAL

8.1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Association demands trial by jury in this action of all issues so triable.

DATED this 5th day of October, 2018.

STEIN, SUDWEEKS & HOUSER, PLLC

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/s/ Jerry Stein
/s/ Justin Sudweeks
/s/ Daniel Houser*

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